

AUGUST 22, 2022

SEC Proposes Heightened Private Fund Reporting on Form PF

On August 10, 2022, the SEC and CFTC proposed joint amendments to Form PF (“Proposed Amendments”) (available [here](#)) that are designed, according to the proposing release, to enhance the Financial Stability Oversight Council’s ability to assess systemic risk and bolster the SEC’s regulatory oversight of private fund advisers, as well as to provide greater insight into private funds’ operations and strategies, assist in identifying trends, improve data quality and comparability and reduce reporting errors. If adopted, the Proposed Amendments would:¹

- substantially increase, in scope and granularity, reporting by “large hedge fund advisers” on “qualifying hedge funds” (generally, those with a net asset value of at least \$500 million);
- remove aggregate reporting for large hedge fund advisers;
- amend reporting on basic information about advisers and the “private funds” they advise;
- expand reporting concerning “hedge funds”; and
- amend reporting on “master-feeder arrangements,” “parallel fund structures” and funds of funds.

The Proposed Amendments are the second set of amendments to Form PF that have been proposed in 2022. In January, the SEC proposed amendments (“January Proposal”) (available [here](#)) that would amend sections 3 and 4 of Form PF (which, respectively, address “liquidity funds” and “private equity funds” advised by “large private fund advisers,” as well as add new sections 5 and 6 (which, respectively, would address large hedge fund advisers and all advisers to private equity funds)).² The January Proposal was issued only by the SEC, not the CFTC, and those amendments have not become final. By contrast, with respect to sections 1 and 2, Form PF is a joint form of the SEC and CFTC, and therefore the Proposed Amendments were issued jointly by the agencies with respect to dual registrants (i.e., private fund investment advisers registered with the SEC and commodity pool operators registered with the CFTC).³

Significant pushback from the private funds industry is anticipated, both with respect to the substance of the additional reporting requirements and the increased compliance costs associated with such granular reporting on Form PF. While many private fund advisers have adopted language in their expense allocation provisions that permits Form PF-related costs to be allocated to their private fund clients, there is a question as to whether the SEC’s recently proposed series of sweeping new rules

¹ See the attached Glossary of Terms for defined terms used herein.

² The amendments proposed in the January Release would renumber existing section 5 of Form PF, relating to temporary hardship exemptions, as section 7.

³ The Proposed Amendments would not “reinstate” the “substituted compliance” regime that previously permitted dual registrants to submit Form PF in lieu of certain CFTC Form CPO-PQR filing requirements, which was eliminated by the CFTC in October 2020. See Compliance Requirements for Commodity Pool Operators on Form CPO-PQR (Oct. 10, 2020) (available [here](#)).

prohibiting certain activities relating to private funds (“February Proposal”) (available [here](#)), if adopted as proposed, would permit such expense allocations going forward.⁴

The following highlights certain of the Proposed Amendments particularly relevant to hedge funds and private equity funds.

Large Hedge Fund Advisers

The Proposed Amendments would greatly increase large hedge fund adviser reporting on qualifying hedge funds, including how large hedge fund advisers report investment exposures, borrowing and counterparty exposure, market factor effects, currency exposure reporting, turnover, country and industry exposure, central clearing counterparty reporting, risk metrics, investment performance by strategy, portfolio correlation, portfolio liquidity and financing liquidity. The Proposed Amendments would:

- **Investment Exposure Reporting** – (1) replace the current table reporting on qualifying hedge fund exposures to different types of assets with narrative instructions and a drop-down menu; (2) require reporting based on “instrument type” within sub-asset classes to identify whether the fund’s investment exposure is achieved through cash or physical investment exposure, through derivatives or other synthetic positions or indirectly (e.g., through a pooled investment such as an exchange traded fund, an investment company or a private fund); (3) require the calculation of “adjusted exposure” for each sub-asset class (i.e., require (in addition to value as currently reported) the calculation of “adjusted exposure” for each sub-asset class that allows netting across instrument types representing the same reference asset within each sub-asset class, and, for fixed income, within a prescribed set of maturity buckets); (4) require uniform interest rate risk measure reporting for sub-asset classes that have interest rate risk (while eliminating the current option to report one of duration, weighted average tenor or 10-year equivalents); and (5) amend the list of reportable sub-asset classes consistent with these other changes (e.g., “listed equity” securities, American depository receipts, repos, collateralized debt obligations, collateralized loan obligations, “digital assets”) and collect enhanced information for some asset types.
- **Borrowing and Counterparty Exposure** – add a new “consolidated counterparty exposure table” which would capture all cash, securities and synthetic long and short positions by a reporting fund, a fund’s credit exposure to counterparties and amounts of collateral posted and received; large hedge fund advisers would be required to:
 - report in U.S. dollars, as of the end of each month of the reporting period, a qualifying hedge fund’s borrowings and other transactions with creditors and other counterparties by type of borrowing or transaction (e.g., unsecured, secured borrowing and lending under a prime brokerage agreement, secured borrowing and lending via repo or reverse repo, other secured borrowing and lending, derivatives cleared by a central clearing counterparty (or central clearing house) (“CCP”) and uncleared derivatives) and the collateral posted or received by a reporting fund in connection with each type of borrowing or other transaction;
 - classify each type of borrowing by creditor type (i.e., U.S. depository institution, U.S. creditors that are not depository institutions, and non-U.S. creditors);
 - classify posted collateral by type (e.g., cash and cash equivalents, government securities, securities other than “cash and cash equivalents” and government securities and other types of collateral or credit support (including the face

⁴ Under the February Proposal, a private fund adviser would be prohibited from charging a private fund for “regulatory or compliance expenses or fees of the adviser or its related persons” (e.g., the adviser’s Form ADV), regardless of whether the private fund’s governing documents permit such activities, the adviser otherwise discloses the practices and/or the private fund’s investors (or LPAC) have consented to the activities either expressly or implicitly. While Form PF is a requirement under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), that falls to the adviser, the February Proposal failed specifically to mention Form PF, and as a result, it is unclear whether contractual language in a private fund’s governing documents allocating Form PF-related expenses to a private fund client would run afoul of the February Proposal (if adopted as proposed).

amount of letters of credit and similar third party credit support) received and posted by a reporting fund and secured borrowing and lending (prime brokerage or other brokerage agreement); and

- report, at the end of each month of the reporting period, the expected increase in collateral required to be posted by the reporting fund if the margin increases by one percent of position size for each type of borrowing or other transaction.
- **Significant Counterparty Reporting** – require large hedge fund advisers, for each of their qualifying hedge funds, to identify (1) all creditors and counterparties (including CCPs) where the amount a fund has borrowed (including any synthetic long positions) before posted collateral equals or is greater than either (a) 5% of the fund’s net asset value or (b) \$1 billion, and (2) all counterparties (including CCPs) to which a fund has net mark-to-market counterparty credit exposure after collateral that equals or is greater than either (a) 5% of the fund’s net asset value or (b) \$1 billion.
- **Market Factor Effects** – require large hedge fund advisers to qualifying hedge funds to respond to all market factors to which their portfolio is directly exposed, rather than allowing advisers to omit a response to any market factor that they do not regularly consider in formal testing in connection with the reporting fund’s risk management, as Form PF currently provides.
- **Aggregate Reporting** – remove the requirement that large hedge fund advisers report certain aggregated information about the hedge funds they advise. According to the proposing release, such information combines funds with different strategies and activities, thus making analyses less meaningful and potentially obscuring the data about hedge funds, including by masking the directional exposures of individual funds.
- **Reporting Timelines** – require large hedge fund advisers to update Form PF within 60 calendar days after the end of each calendar quarter, rather than after each fiscal quarter, as Form PF currently requires.

Advisers and their Private Funds

The Proposed Amendments would require advisers to report additional information about themselves and the private funds they advise, including identifying information, assets under management, withdrawal and redemption rights, gross asset value and net asset value, inflows and outflows, base currency, borrowings and types of creditors, fair value hierarchy, beneficial ownership and fund performance. The Proposed Amendments would:

- **Identifying Information**
 - **LEIs** – require advisers to provide the legal entity identifier (“LEI”) for themselves and their “related persons,” if they have an LEI.
 - **AUM** – when reporting regulatory assets under management and net assets under management, require advisers to exclude the value of private funds’ investments in other “internal private funds” to avoid double counting of fund of funds assets (however, advisers would include the value of “trading vehicle” assets because, under the proposed definition, they would be wholly owned by one or more reporting funds).
- **All Private Funds**
 - **Type of Private Fund** – require advisers to: (1) identify the reporting fund as either a hedge fund that is not a qualifying hedge fund, qualifying hedge fund, liquidity fund, private equity fund, “real estate fund,” “securitized asset fund,” “venture capital fund” or other (if “other” is selected, the adviser must describe the reporting fund and explain why it would not qualify for any of the other options); (2) indicate whether the reporting fund is a “commodity pool,” which is

categorized as a hedge fund on Form PF; and (3) report whether a reporting fund operates as a “UCITS” or “AIF,” or markets itself as a money market fund outside the United States, and in which countries (if applicable).

- **Withdrawal or Redemption Rights** – require all advisers (rather than only large hedge fund advisers, as Form PF currently requires) to report whether each reporting fund provides investors with withdrawal or redemption rights in the ordinary course, and, if so, the permitted frequency of such withdrawals or redemptions.
 - **Gross Asset Value and Net Asset Value** – require advisers who are filing quarterly updates to report gross asset value and net asset value as of the end of each month of the reporting period, rather than only reporting the information as of the end of the reporting period, as Form PF currently requires; require advisers to separately report the value of unfunded commitments included in the gross and net asset value.
 - **Inflows and Outflows** – requiring advisers to report information concerning the reporting fund’s activity, including contributions to the reporting fund, as well as withdrawals and redemptions, which would include all withdrawals, redemptions or other distributions of any kind to investors (Form PF would specify that, for purposes of the question, advisers must include all new contributions from investors, but exclude contributions of committed capital that they have already included in gross asset value calculated in accordance with Form ADV instructions).
 - **Borrowings** – revise the term “borrowings” to (1) specify that it includes “synthetic long positions” and (2) provide a non-exhaustive list of types of borrowings.
 - **Fair Value Hierarchy** – revise how advisers report the assets and liabilities of each reporting fund broken down using categories that are based on the fair value hierarchy established under U.S. generally accepted accounting principles by requiring advisers to indicate the date the categorization was performed, report the absolute value of all liabilities, provide an explanation if they report assets as a negative value and separately report cash and cash equivalents.
 - **Beneficial Ownership** – require advisers to indicate whether beneficial owners that are broker-dealers, insurance companies, non-profits, pension plans, banking or thrift institutions are U.S. persons or non-U.S. persons and whether beneficial owners that are private funds are either internal private funds or “external private funds.”
 - **Fund Performance** – create an exception to the tabular reporting so that if the reporting fund’s performance is reported to current and prospective investors, counterparties or otherwise as an “internal rate of return” since inception, the adviser would report its performance as an internal rate of return, and if such information is reported to current and prospective investors, counterparties or otherwise, in a currency other than U.S. dollars, advisers would report the data using that currency; and require advisers to report additional performance-related information if the adviser calculates a market value on a daily basis for any position in the reporting fund’s portfolio.
- **Hedge Funds**
 - **Investment Strategies** – update the strategy categories that advisers to hedge funds can select, including (1) more granular categories for equity strategies, such as factor driven, statistical arbitrage and emerging markets; (2) more granular categories for credit strategies, such as litigation finance, emerging markets, and asset-backed/structured products; (3) real estate; and (4) digital assets.
 - **Counterparty Exposures** – require advisers to hedge funds (other than qualifying hedge funds) to complete a new “consolidated counterparty exposure table” concerning exposures that (1) the reporting fund has to creditors and counterparties and (2) creditors and other counterparties have to the reporting fund.

- **Trading and Clearing Mechanisms** – require advisers to hedge funds to (1) report (a) the value traded and (b) the value of positions at the end of the reporting period, rather than requiring advisers to report information as a percentage in terms of value and trade volumes, as Form PF currently requires; (2) report information about trading and clearing mechanisms for transactions in interest rate derivatives separately from other types of derivatives; (3) continue reporting clearing information concerning “repos,” but would specify how to report sponsored repos, and would specify that advisers must report “reverse repos” with repos.

Master-Feeder Arrangements and Parallel Fund Structures

Currently, Form PF allows advisers to report complex structures either in the aggregate or separately, as long as they do so consistently throughout Form PF. The Proposed Amendments generally would require advisers to report separately each component fund of a master-feeder arrangement and parallel fund structure, except where a feeder fund invests all its assets in a single master fund and/or cash and cash equivalents (a “disregarded feeder fund”). In the case of a “disregarded feeder fund,” advisers instead would identify the disregarded feeder fund and look through to any disregarded feeder fund’s investors in responding to certain questions regarding fund investors on behalf of the applicable master fund. In addition, the Proposed Amendments would no longer allow advisers to report any “parallel managed accounts” (which is distinguished from “parallel fund structure”), except advisers would continue to be required to report the total value of all parallel managed accounts related to each reporting fund.

Funds of Funds and Similar Vehicles

The Proposed Amendments would make the following changes with respect to reporting by advisers that advise a private fund that invests in other private funds (a “fund of funds”) or trading vehicles:

- **Funds of Funds**
 - explicitly require an adviser to include the value of fund of funds investments in determining whether it is required to file Form PF (however, the Proposed Amendments would continue to permit an adviser to include or exclude fund of funds investments (including internal private funds and external private funds) in determining whether it meets thresholds for filing as a large hedge fund adviser, “large liquidity fund adviser” or “large private equity adviser” and whether a reporting fund is a qualifying hedge fund);
 - require an adviser to include the value of a reporting fund’s fund of funds investments when responding to questions on Form PF, unless otherwise directed by the instructions to a particular question; and
 - explicitly provide that, when responding to questions, advisers must not “look through” a reporting fund’s investments in internal private funds or external private funds (other than a trading vehicle as explained below), unless the question instructs the adviser to report exposure obtained indirectly through positions in such funds or other entities.
- **Trading Vehicles** – if the reporting fund uses a trading vehicle, and the reporting fund is its only equity owner, the adviser would either (1) identify the trading vehicle in section 1b, and report answers on an aggregated basis for the reporting fund and such trading vehicle or (2) report the trading vehicle as a separate reporting fund; if reporting separately, (1) advisers would report the trading vehicle as a hedge fund if a hedge fund invests through the trading vehicle; (2) advisers would report the trading vehicle as a qualifying hedge fund if a qualifying hedge fund invests through the trading vehicle; (3) otherwise, advisers would report the trading vehicle as a liquidity fund, private equity fund or other type of fund based on its activities.
- **Investments in Funds That Are Not Private Funds** – explicitly provide that, when responding to questions, advisers must not “look through” a reporting fund’s investments in funds or other entities that are not private funds, or trading vehicles, unless the question instructs the adviser to report exposure obtained indirectly through positions in such funds or other entities.

Next Steps

The public comment period will remain open until the later of October 11, 2022 or 30 days after the Proposed Amendments publication in the Federal Register.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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Glossary of Terms: All terms defined below reflect the definitions set forth in the Proposed Amendments Glossary of Terms.

“AIF” means an alternative investment fund that is not regulated under the UCITS Directive, as defined in the Directive of the European Parliament and of the Council on alternative investment fund managers (No. 2011/61/EU), as amended, or an alternative investment fund that is captured by the Alternative Investment Fund Managers (Amendment etc.) (EU Exit) Regulations 2019, as amended.

“Borrowings” means secured borrowings and unsecured borrowings, collectively. Borrowings by a reporting fund include, but are not limited to (i) cash and cash equivalents received with an obligation to repay; (ii) securities lending transactions (count cash and cash equivalents and securities received by the reporting fund in the transaction, including securities borrowed by the reporting fund for short sales); (iii) repo or reverse repo (count the cash and cash equivalents and securities received by the reporting fund); (iv) negative mark-to-market of derivative transactions from the reporting fund’s point of view; and (v) the gross notional value of synthetic long positions.

“Cash and cash equivalents” means cash (including U.S. and non-U.S. currencies) and cash equivalents. For purposes of this definition, cash equivalents are: (i) bank deposits, certificates of deposit, bankers acceptances and similar bank instruments held for investment purposes; (ii) the net cash surrender value of an insurance policy; or (iii) investments in money market funds.

“Commodity pool” means a “commodity pool,” as defined in section 1a(10) of the U.S. Commodity Exchange Act, as amended.

“Digital assets” means an asset that is issued and/or transferred using distributed ledger or blockchain technology (“distributed ledger technology”), including, but not limited to, so-called “virtual currencies,” “coins” and “tokens.”

“External private funds” means private funds that neither you nor your related persons advise.

“Hedge fund” means any private fund (other than a securitized asset fund): (a) with respect to which one or more investment advisers (or related persons of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses); (b) that may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration).

“Internal private funds” means private funds that you or any of your related persons advise.

“Internal rate of return” means the discount rate that causes the net present value of all cash flows throughout the life of the fund to be equal to zero.

“Large hedge fund adviser” means any private fund adviser that is required to file Section 2 of Form PF for a qualifying hedge fund. An adviser is a “large hedge fund adviser” if you and your related persons, collectively, had at least \$1.5 billion in hedge fund assets under management (the portion of such adviser’s regulatory assets under management that are attributable to hedge funds that it advises) as of the last day of any month in the fiscal quarter immediately preceding your most recently completed fiscal quarter.

“Large liquidity fund adviser” means any private fund adviser that is required to file Section 3 of Form PF. An adviser is a “large liquidity fund adviser” if (i) you advise one or more liquidity funds and (ii) as of the last day of any month in the fiscal quarter immediately preceding your most recently completed fiscal quarter, you and your related persons, collectively, had at least \$1 billion in combined money market and liquidity fund assets under management (the sum of: (i) the portion of such adviser’s regulatory assets under management that are attributable to liquidity funds it advises (including liquidity funds that are also

hedge funds); and (ii) the portion of such adviser's regulatory assets under management that are attributable to money market funds that it advises).

"Large private equity fund adviser" means any private fund adviser that is required to file Section 4a of Form PF. An adviser is a "large private equity adviser" if you and your related persons, collectively, had at least \$2 billion in private equity fund assets under management (the portion of such adviser's regulatory assets under management that are attributable to private equity funds it advises) as of the last day of your most recently completed fiscal year.

"Large private fund adviser" means any large hedge fund adviser, large liquidity fund adviser or large private equity adviser.

"LEI" means, with respect to any company, the "legal entity identifier" assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury's Office of Financial Research or a financial regulator. Do not substitute any other identifier that does not meet this definition.

"Liquidity fund" means any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors.

"Listed equity" means equities, including preferred equities, listed on a regulated exchange. Include synthetic or derivative exposures to equities. Include positions held indirectly through another entity (e.g., through an ETF, exchange traded product, U.S. registered investment companies, non-U.S. registered investment companies, internal private fund or external private fund, commodity pool, or other company, fund or entity).

"Master-feeder arrangement" means an arrangement in which one or more funds ("feeder funds") invest all or substantially all of their assets in a single private fund ("master fund"). A fund would also be a feeder fund investing in a master fund for purposes of this definition if it issued multiple classes (or series) of shares or interests and each class (or series) invests substantially all of its assets in a single master fund.

"Parallel fund structure" means a structure in which one or more private funds (each, a "parallel fund") pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund.

"Parallel managed account" means, with respect to any private fund, a parallel managed account, any managed account or other pool of assets that you advise and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified private fund.

"Private equity fund" means any private fund that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund or venture capital fund and does not provide investors with redemption rights in the ordinary course.

"Private fund" means any issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that Act. If any private fund has issued two or more series (or classes) of equity interests whose values are determined with respect to separate portfolios of securities and other assets, then each such series (or class) should be regarded as a separate private fund. This only applies with respect to series (or classes) that you manage as if they were separate funds and not a fund's side pockets or similar arrangements.

"Qualifying hedge fund" means any hedge fund that has a net asset value (individually or in combination with any feeder funds, parallel funds and/or dependent parallel managed accounts) of at least \$500 million as of the last day of any month in the fiscal quarter immediately preceding your most recently completed fiscal quarter. In determining whether a hedge fund meets this threshold, you may exclude the fund's investments in other private funds (including internal private funds and external private funds).

“Real estate fund” means any private fund that is not a hedge fund, that does not provide investors with redemption rights in the ordinary course and that invests primarily in real estate and real estate related assets.

“Related person” means, as defined in Form ADV, any advisory affiliate and any person that is under common control with your firm.

“Repo” means any purchase of securities coupled with an agreement to sell the same (or similar) securities at a later date at an agreed upon price (i.e., a “securities in” transaction). Do not include any positions held via CDS (these should be recorded in the CDS category). **“CDS”** means Credit default swaps, including any loan credit default swaps.

“Reverse repo” means any sale of securities coupled with an agreement to repurchase the same (or similar) securities at a later date at an agreed upon price (i.e., a “securities out” transaction).

“Securitized asset fund” means any private fund whose primary purpose is to issue asset backed securities and whose investors are primarily debt-holders.

“Synthetic long position” means a total return derivative or similar contract under which (i) the reporting fund receives returns of a risky reference asset in exchange for paying the returns of a different, riskless reference asset or (ii) the reporting fund sells deep-in-the-money puts on a risky reference asset in exchange for an option premium. Total return derivatives may include, for example, a derivative that receives the total return or credit spread of equity or debt securities issued by individual issuers, or baskets or indices of such securities, including swaps, forwards, deep-in-the-money options and credit default swaps which receive the credit spread (also sometimes described as “short credit protection”). Exclude total return derivatives that have been cleared through a CCP; include uncleared OTC derivative positions only. Include derivatives providing the return of equity securities, real estate, digital assets, commodities, sovereign bonds, corporate bonds, municipal bonds and other assets. Do not include interest rate derivatives, volatility derivatives, variance derivatives or foreign exchange derivatives. Do not include deep-in-the-money call options purchased by the reporting fund if the reporting fund has already paid the option premium in full, but include them if the premium is being paid over time.

“Trading vehicle” means a separate legal entity, wholly-owned by one or more reporting funds, that holds assets, incurs leverage or conducts trading or other activities as part of a reporting fund’s investment activities but does not operate a business.

“UCITS” means an Undertakings for Collective Investment in Transferable Securities, as defined in the UCITS Directive of the European Parliament and of the Council (No. 2009/65/EC), as amended, or as captured by the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2019, as amended.

“Venture capital fund” means any private fund meeting the definition of venture capital fund in rule 203(l)-1 of the Advisers Act.